
LIM BENG YEE & ANOR.**v.****LOO YOKE**

HIGH COURT MALAYA, MUAR

RICHARD TALALLA J

[CIVIL SUIT NO. 42 OF 1981]

15 JUNE 1991

DAMAGES: *Head injury - Loss of vision in one eye - Dysphasia - Impaired understanding and reading abilities - Permanent mental deterioration - Pain and suffering - Loss of amenities - Loss of earnings - Nursing care - Multiplier.*

TORT: *Negligence - Collision between plaintiff cyclist and motorcyclist defendant - Motor cycle skidded across road and collided into infant plaintiff - Testimony of witnesses - 13 years later - Some distance away from scene of accident - Damage to bicycle did not support either version - Pot holes - Bad condition of the road - Riding too fast - Not keeping proper lookout - Balance of probabilities.*

The plaintiff who was 13½ years old at the time of the accident claimed that on the day of the accident he was riding a bicycle along Jalan Mahkota in the direction of Mersing town when the defendant who was riding a motor cycle in the opposite direction skidded, lost control of his machine, proceeded across the road into the path of the plaintiff and then collided into him causing him injury and damage. The collision occurred at or near the junction of Jalan Mersing with a side road called Jalan Lama, the latter being to the right of the plaintiff cyclist and to the left of the defendant.

The defendant denied the plaintiff's claim and alleged that it was the plaintiff who emerged from Jalan Lama into Jalan Mahkota into the path of the motor cycle resulting in a collision which in the circumstances it was impossible for the defendant to avoid.

An essential difference in the testimony of X, a defence witness, and that of the defendant, was whether or not there were other pedestrians in the vicinity at the time of the accident, the defendant saying there were and X saying that there were not.

The plaintiff suffered severe permanent mental deterioration from the head injury he sustained in the accident. He has dysphasia, impaired understanding and reading abilities. The plaintiff also lost the vision in one eye.

Held:

[1] The evidence of the plaintiff's witnesses PW2, PW3 and PW4 was to be preferred to the evidence of X as they did not know the plaintiff prior to the accident. Further, X was only 13 years old at the time of the accident and was testifying more than 13 years later - the translation of his observations as a boy into testimony 13 years later was as to certain points, incredulous. Apart from this, X was quite some distance away from the scene to observe in detail what happened compared to PW3 and PW4 who were at the scene itself.

[2] The damage to the bicycle did not support either the plaintiff's or the defendant's case. There was no conclusive evidence even on a balance of probabilities in this regard.

[3] Upon consideration of all the evidence, the defendant was 100% liable in negligence to the plaintiff in the accident. The skidding and the consequence thereafter could be attributed to the defendant failing to appreciate the potential danger of the pot-holes and the bad condition of the road and in the circumstances riding his motor cycle too fast and not keeping a proper look out.

- a** [4] *General Damages:*
Pain and suffering and loss of amenities
resulting from the head injury RM100,000
Loss of vision in one eye (agreed) RM20,000
Loss of earnings

(past) RM400 p.m.
(future) RM600 p.m.

b Nursing care

(past) RM250 p.m.
(future) RM300 p.m.

[Order accordingly.]

c **Cases referred to:**
Liong Thoo v. Sawiyah & Ors. [1981] CLJ (Rep) 171 (**cons**)
Kuppusamy v. Nithanathan [1990] 2 CLJ (Rep) 302 (**cons**)
Ahmad Daman Huri b. Hussein v. Khoo Chin Yau [1990] 1 CLJ (Rep) 568 (**cons**)
Lai Wee Lian v. Singapore Bus Service (1978) Ltd. [1984] 1 MLJ 325 (**fol**)

- d** **Legislation referred to:**
Evidence Act 1950, ss. 74, 76, 77, 79, 114illus.(g)
For the plaintiff - L. Parthiban; M/s. L. Partiban & Assoc., Counsel; M/s. Iqbal Hakim, Sia & Voo
For the defendant - A.C. Vohrah; M/s. Vohrah & Tan Chee Lan assisted by Khoo Eng Chin

JUDGMENT

- e** **Richard Talalla J:**
In this action it is claimed on behalf of the plaintiff that on 3 April 1977 at about 9.15 a.m. he was riding a bicycle along Jalan Mahkota in the direction of Mersing town when the defendant who was riding a motor cycle in the opposite direction skidded, lost control of his machine, proceeded across the road into the path of the plaintiff and there collided into him causing him injury and damage. The collision occurred at or near the junction of Jalan
- f** Mersing with a side road called Jalan Lama, the latter being to the right of the plaintiff cyclist and to the left of the defendant. The defendant's case was to deny the plaintiff's claim and allege that he the plaintiff emerged from Jalan Lama onto Jalan Mahkota into the path of the motor cycle resulting in a collision which in the circumstances was impossible for the defendant to avoid.
- g** The police arrived at the scene shortly after the accident to investigate and a sketch plan was drawn and a key thereto prepared. The maker had since retired from the police force so it was the OCPD of Mersing as keeper of these official documents who at the instance of the plaintiff identified a copy of the sketch plan and key in evidence at the trial. He claimed he could not certify them as being true copies because he did not have the originals with him. He had searched for the investigation papers but could not find them. The copies on
- h** the face of them seemed to be an official copy of a police sketch plan and key, they appeared to have been signed by one Sergeant 6494 Mokthiar Singh and certified as true copies on 18 December 1977 by one Inspector Chiew Putt Fan over the stamp of the OCPD Mersing. By reference to ss. 74, 76, 77 and 79 of the Evidence Act 1950 I found them to be admissible in evidence.
- i** The plaintiff who was born on 23 October 1963 and therefore 13½ years old at the time of the accident suffered such severe brain damage and the medical evidence was agreed, that he was unable to testify.

Apart from the OCPD, the plaintiff called as witness one Mr. Sumuemtham (PW 3) who said that on the day in question he was stationary with his cycle at the said junction, saw the plaintiff cycling on the left side of Jalan Mersing in the direction of Mersing and the defendant motor cyclist coming from Mersing. This witness testified to hearing the sound of the collision but not actually seeing it. Sumuemtham said he then proceeded to render assistance to the plaintiff. He held the plaintiff's head on his lap. A person whom Sumuemtham said was a teacher arrived at the scene in his car after the accident and took the plaintiff to the Mersing hospital. Sumuemtham accompanied them. Sumuemtham said that there were pot-holes and sand, that the road was bumpy and that lorries carrying sand used that road. The plaintiff also called one Mr. Ramasamy (PW4) who testified that he resided in the vicinity and at about 9.15 a.m. was on his way to town when he saw the plaintiff and defendant proceeding on their respective vehicles. As claimed by PW4, he saw the motor cycle skidding and proceeding diagonally across Jalan Mahkota and colliding into the bicycle. He testified to a person arriving by car at the scene and taking the boy into the motor car. The evidence of these two witnesses was to some extent corroborated by the evidence of one Mr. Subramaniam (PW2) who testified that earlier that morning between 8 a.m. and 9 p.m. the plaintiff had visited his Subramaniam's house. The plaintiff left on his bicycle after about 15 minutes. Subramaniam said that he himself left his house on foot some ten minutes later proceeding along Jalan Mahkota where he found the plaintiff lying on the road. Subramaniam described the location of his house in relation to Jalan Mahkota. His evidence was suggestive of the plaintiff having travelled along Jalan Mahkota in the direction of Mersing Town when the accident occurred and not across it from Jalan Lama as alleged by the defence.

There had been an earlier trial of this action. It was part heard, then abandoned and heard afresh by me. Sumuemtham and Subramaniam had given evidence at the previous trial. In cross-examination of these 2 witnesses they were referred to the evidence they had given at the previous trial which differed from the evidence they had respectively given in this trial. There were discrepancies but taking into consideration all circumstances and the lapse of time between the date of accident, the giving of their evidence at the first trial, in February 1987 and the evidence given 3 years later in this trial, I did not consider the discrepancies in their evidence to be of such great significance as to bring the credibility of these witnesses into question.

The defendant testified that as he reached near the junction he saw a cyclist at the mouth of the junction, that the cyclist wanted to come out of the junction, that he hooted his horn and applied his brake but due to the braking his motor cycle skidded to his right side. He added that at that time he saw that the cyclist had gone out a little bit from the junction. He was not very sure whether the cyclist stopped at the junction or not. The defendant testified that he knew that he had knocked into somebody after he, the defendant, fell down. The defendant had made a police report shortly after the accident. In that report he had stated *inter alia* that on reaching the junction he saw a child riding a bicycle coming from Jalan Lama proceeding towards Jalan Mahkota, that he hooted his horn but the cyclist cut across his path, that he tried to avoid him but did not succeed and they collided, and that they both fell and sustained injuries. The defendant was asked in examination-in-chief to explain the apparent discrepancy and his answer was that he made his report verbally, that he knew and was able to read only a little bit of Bahasa Malaysia. He said that what he told the policeman was that he saw a boy coming out a little bit, that he horned and braked, fell down and knocked into somebody. He said that the police report to the effect that "tetapi budak penunggang basikal ini terus potong masuk ke hadapan motosikal saya" was not correct and that the policeman who took his report had misunderstood him. The defendant further

- a* testified that he could not say whether it was the plaintiff that he knocked down. The defendant testified that just before the accident there were other people on both sides of Jalan Lama, at its junction with Jalan Mahkota. There were also people on the opposite side of Jalan Mahkota. The people on the opposite side were proceeding in the direction of Mersing. These people were small boys, Indians and Chinese. Some of these boys were cycling and some were walking. He could not recollect which boy came out a little bit from
- b* Jalan Lama nor whether he was Indian or Chinese. He only saw one person coming out. He testified that he could not ascertain whether it was the infant plaintiff who came out a little from the junction. The defendant said that he was thrown on the grass verge some 10 feet off the falling motor cycle and that when he turned his head and looked he saw that a boy had fallen on the road. The defendant spoke to there being pot holes, sand and stones on the road. He said that trenches had been dug across the road. It was put to him that because
- c* of the trenches, stones and pot-holes he skidded to the wrong side of the road and collided into the plaintiff and his bicycle to which he replied that he was not sure whether that was so.

- The defendant's evidence did not contradict the evidence of the plaintiff's witnesses as to how the accident happened. The defendant was unable to say whether the cyclist who was seemingly intending to cross Jalan Mahkota from Jalan Lama was in fact the plaintiff. There
- d* was no reason for me to disbelieve the defendant in any respect. He appeared to me to be a truthful witness.

- Prior to the defendant testifying the defence had called one Encik Mohd. Azhar Shah as a witness. Azhar testified that he saw a cyclist proceeding along Jalan Lama without stopping at the junction and at the same time he saw a motor cyclist travelling along Jalan Mahkota attempting to avoid the cyclist but colliding into it. He said that the cyclist was a teenage
- e* male Chinese. Azhar went on to testify that at the time of the accident there were no persons or traffic on the road. An essential difference in the testimony of Azhar and the defendant is whether or not there were other pedestrian in the vicinity at the time of the accident, the defendant saying that there were and Azhar saying that there were not. To my mind it was the defendant who was in a better position to see what was before him. Azhar at the time of
- f* the accident was a young student gazing at the road from the veranda of his house some 25 metres from the scene. He had no particular business or interest in what was going on whereas the defendant was a participant in the event.

- The other difference in versions lies between the plaintiff's witnesses Sumuetham, Ramasamy and Subramaniam on the one part and Azhar on the other part, the former testifying to the plaintiff travelling along Jalan Mahkota in a direction opposite to the motor cyclist and Azhar saying that a teenage male Chinese had crossed Jalan Mahkota from Jalan Lama in the path of the motor cycle which in trying to avoid the cyclist collided into the cyclist giving rise to the inference that it was the plaintiff who in crossing the road from Jalan Lama in the path of the motor cyclist was collided into by the motor cycle. In this regard I prefer the evidence of Sumuetham, Ramasamy and Subramaniam to that of Azhar. Sumuetham and Ramasamy along with the plaintiff and his father lived in the vicinity of the accident.
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- h* They did not know one another personally then but two weeks to a month after the accident the father discovered them as having seen or been at the scene of the accident. In 1982 Ramasamy gave the plaintiff's then solicitor a statement by affidavit and the father subsequently had them both brought to Court to testify. I saw nothing extraordinary about this. However, in regard to Azhar, one Mr. Chong a professional investigator testified to interviewing him about a month after the accident. According to Chong, Azhar at that time
- i* claimed to have seen the accident. Yet Chong did not record any statement from him but

merely mentioned his name when he Chong submitted a report to his principal. The report was made in 1977. Counsel for the defendant conceded that the account of the interview was not before the Court, yet admitting to the account being admissible under the Evidence Act 1950. In the circumstances, I considered that the presumption arising under s. 114(g) of that Act namely that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it, applied. Different are the circumstances under which Ramasamy came to make his affidavit. No solicitor in his right mind would have engaged in the futile exercise of establishing by affidavit a statement which did not support the case of the plaintiff his client. There had been the previous trial in 1987. This trial commenced afresh on 8 January 1990 and was heard intermittently, on 28 February, 19 March and 12 April. The issue of liability for negligence was fought out tooth and nail. Yet there was no sign of Azhar coming forward to testify. Chong and Azhar testified on 12 August 1990 and it is only about a month before so testifying, in the course of Chong serving a subpoena on him, that it was thought fit for Chong to take a statement from Azhar. The subpoena was in fact issued on 12 July 1990.

This sequence of events struck me as being strange seeing that Azhar was purportedly such an important witness. There should have been some explanation for it. No explanation was forthcoming. Azhar did not impress me as being a wholly independent witness as he should have been. He was held out to be no more than an onlooker with no interest either way, whether for the plaintiff or the defendant, in the accident. However, in giving evidence he seemed to have more than a bystander's interest in establishing his version of how the accident happened. To my mind his demeanour was partisan. In preferring the evidence of Sumuemtham and Ramasamy to that of Azhar I also had in mind that Azhar was only 13 years old at the time of the accident and he was testifying more than 13 years later. The translation of his observations as a boy into testimony some 13 years later was as to certain points incredulous. He was so dogmatically self confident. He could recall details such as further identification of the defendant by reference to a seemingly imperceptible scar on his left eyebrow, which the witness claimed was the result of an injury the defendant sustained in this accident. Yet he could not remember whether the defendant sounded his horn before the accident but that was not sufficient. He had to explain this shortcoming by pronouncing that the quality of sight is better than the quality of hearing. He did not know the time when he was initially at the verandah or the accident happened, at first because he did not see the time, then said he did remember the time - because of the weather condition that morning, but he did not explain what the latter had to do with the former on that particular day in relation to his regained memory. He was truculent too. When opposing Counsel asked him how Chong met him, he thought that Counsel should ask Chong himself. Apart from this Azhar was quite some distance away from the scene to observe in detail what had happened compared to Sumuemtham and Ramasamy who were at the scene itself.

The defence made reference to the damaged horizontal and side bars of the bicycle and Counsel submitted that the damage was consistent with the bicycle being run into whilst the plaintiff was crossing the road. Upon a consideration of all the evidence I could not see the damage to the bicycle as supporting or not supporting either the plaintiff's or the defendant's case. To my mind to make a finding one way or the other in this regard would have been to speculate. Again the defence in reference to Ramasamy's evidence to the effect that the bicycle on impact was pushed back about 12 feet commented that there were no scratch marks on the sketch plan. Once again I find I can make no conclusive finding even on a balance of probabilities in this regard. The movement of the two vehicles and the manner in which they so did after impact is not known and any deduction as to what they did or did not do in relation to the road surface again would amount to speculation.

- a** In the end Mr. Ramasamy came through his testimony unshaken. Defence Counsel put to each of the plaintiff's 3 witnesses abovestated who testified to being at the scene that they were not there at all, thus implying that the whole of their evidence was a fabrication. Each denied the suggestion. I accepted each denial. Counsel then in his final speech on the issue of negligence conceded that these 3 witnesses may have been at the scene but questioned whether any of them saw the accident because, so Counsel argued, they were all witnesses
- b** who were known to exist one or two months after the accident and yet in a police summons case in the Magistrate's Court at Mersing none of them were called. That to me seemed a *non sequitur*. Even if the testimony of the first two witnesses could be said to be tainted by contradictory statements, as between Azhar and Ramasamy I accept the latter as a witness of truth.
- c** Upon a consideration of all the evidence I find that the accident occurred in a manner as pleaded by the plaintiff, that the plaintiff was proceeding along Jalan Mahkota in the direction of Mersing town and opposite to the direction of the motor cyclist, that the defendant motor cyclist because of the condition of the road, there being sand and stones and the road being bumpy by reason of trenches being dug across it, probably by reason of the defendant attempting to avoid the pot-holes or a cyclist he thought might have been proceeding out of the junction ahead of him, got his motor cycle into a skid resulting in his losing control
- d** of the machine which then proceeded diagonally across Jalan Mahkota and collided with the plaintiff who was riding in the opposite direction to the motor cycle. As I see it a motor cycle does not ordinarily skid and proceed out of control for no reason. I attribute the skidding and its consequence to the defendant's negligence in failing to appreciate the potential danger of the pot holes and bad condition of the road and in the circumstances riding his motor cycle too fast and not keeping a proper look out. The defendant had ridden frequently
- e** along that stretch of road before the accident. He knew its condition. He should have taken greater care. I find specifically that the plaintiff was not travelling along Jalan Lama and attempting to cross Jalan Mahkota in front of the defendant motor cyclist as pleaded in the defence but not supported by the defendant when he testified before me. I accept the evidence of Sumuenthram, Ramasamy and Subramaniam and reject the evidence of Azhar inasmuch as
- f** the evidence of Encik Azhar contradicts the evidence of Sumuenthram and Ramasamy. I accept the defendant as testifying that a boy riding a bicycle had come to the mouth of the junction and that he, the defendant, in expectation of the boy cutting across Jalan Mahkota in front of him braked and skidded diagonally across Jalan Mahkota and collided into the plaintiff. In the circumstances I hold the defendant to be 100% liable in negligence to the plaintiff in the accident.
- g** The trial was a long one taking 11 days set intermittently over a period ending on 7 April 1991. During the trial the plaintiff was in Court with his father very often. Thus I had ample opportunity to observe his behaviour. He was indeed, as could be gathered from the agreed medical reports, childish and bizarre, from time to time laughing for no apparent reason and being boisterous. If he was pretending he would have been a pretty good actor. I do not think he was. I think his conduct was genuine and I took it into consideration as I did the
- h** medical evidence in assessing damages.
- i** The plaintiff's condition as deduced from the agreed medical evidence is such that he is no more than a simpleton. He has dysphasia, meaning that he has difficulty in speaking, with inability to co-ordinate words and arrange them in correct order. He is unable to count in any elementary fashion. His addition is limited to 2 digits. He cannot subtract. He is able to read Chinese consistent with the level of 3 to 4 years primary Chinese school education but his understanding is much worse than his reading ability. He can understand simple commands

only, like picking objects from the floor, aided by gestures. He has suffered severe permanent mental deterioration from the head injury he sustained in the accident. There has been no significant improvement in his mental state in the last 10 years.

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The special damages are agreed at RM500. Damages for injury to the plaintiff's eye, he lost his vision in one eye, are agreed at RM20,000. That which is in dispute is damages for:

(a) pain and suffering and loss of amenities resulting from the head injury.

b

(b) cost of nursing care, past and future and

(c) damages for loss of earnings or earning capacity past and future.

As to (a) a number of cases were placed before me for consideration including *Liong Thoo v. Sawiyah & Ors.* [1981] CLJ (Rep) 171, *Kuppusamy v. Nithanathan* [1990] 2 CLJ (Rep) 302 and *Ahmad Daman Huri Bin Hussein v. Khoo Chin Yau* [1990] 1 CLJ (Rep) 568. Plaintiff's Counsel claimed RM110,000 under this head and for the defence a sum of RM100,000 was conceded. Applying the cases abovestated to the facts in this case including the agreed medical evidence I assess damages under (a) at RM100,000, allowing for overlapping.

c

The plaintiff is one of a family of five, 2 brothers and 3 sisters. He is the second child. At the time of the accident he was schooling. He was in Form 2. His school report card indicates that he was an average student. His father was by trade a pig rearer and pork seller. He still carries on that trade. In 1979 he had a Red Crescent contract to supply food to the Vietnamese. In 1983 he started a sawmill business in partnership which was dissolved the next year. In 1988 he ventured again in the sawmill business, this time as an equal partner with his brother-in-law. They employ 30 workers and produce 500 to 600 tons of sawn timber, half for export and half for the local market. In this same year he started a cabin and chalet business with 2 others, in which he holds 110/300 shares. This business produces chalets and cabins packaged for export. A manager has been employed for this business and is paid RM1,000 per month. The plaintiff's father testified as to the gross and nett income of the respective businesses but when the income tax documents were subsequently adduced in evidence his testimony was discredited. The plaintiff's father testified that the plaintiff being his eldest son, he would have engaged him as manager of the businesses and paid him about RM2,000 per month and that eventually he would have given him the businesses. He employed his eldest daughter, then 30 years old, in the sawmill business and paid her RM800 per month with an extra allowance of RM1,600 per annum. The father added that his other son was studying electronics in the United States of America and that he did not know whether he would help the father to do the business later. The father's notices of assessment of income tax for the relevant years in respect of his personal income and the income of his companies conducting the sawmill and cabin and chalet businesses, the latter company having been given pioneer status, were produced and admitted in evidence by consent. They did indicate high gross profits and correspondingly high expenses which included salaries, wages and allowances which went to establish that at least from 1988 it was within the financial capacity of the plaintiff and these companies to employ the plaintiff assuming he was capable of being so employed.

d**e****f****g****h**

Against this background I proceeded to assess the loss of future earnings or financial capacity.

There was a question as to the mode of calculation of the loss of future earnings or earning capacity that is to say whether by recourse to annuity tables or by assessing and then applying the multiplicand to a multiplier. As to the former method the tables normally used

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a in past cases have been those prepared by the legal firm of Murphy & Dunbar. I had in mind that every case has to be decided on its own facts. How old these tables are and whether the scaled amounts of annuity they speak to are in fact available at this point of time was open to question. Accordingly Counsel were asked to inquire in the financial market what the current position is. In fact Counsel were addressed thus:

b on the basis that the method of calculation of the damages in this case should be by recourse to "actuarial" tables, is it not pertinent to ask whether or not it should be proved as a fact that there are available in the markets of this country facilities whereby for a certain sum invested at 5% interest or any other rate there will be produced a given sum by way of monthly or yearly income or can the Court take judicial notice of such a fact and if so on what basis is that notice to be taken?

c It is well and good for this Court to be asked in the event of the plaintiff being entitled to judgment, for damages to be assessed on the basis of "actuarial" tables.

The question is what is the end result of such an award. For example if such an award is made and the judgment embodying that award is satisfied can the plaintiff armed with the judgment sum walk into an insurance company or financial institution and purchase an annuity and obtain an income for the rest of his life in a sum equivalent to the sum which the Court has found he has lost per month.

d As I see it at this stage, and I will if requested by Counsel hear Counsel in this regard, there is no evidence in this case of such a facility being available and there is no basis for me to take judicial notice of any fact in regard thereto and therefore there should be no assessment on the actuarial table basis and therefore it must follow that assessment should be made, on the direct multiplier basis.

e That being the case and the plaintiff having argued for assessment on the direct multiplier basis the ball falls in the Court of the defendant as to whether the defendant would seek an adjournment to consider having before the Court further evidence as to the availability in the market of annuities.

f The trial was adjourned on the application of Counsel for the defendant. When the hearing resumed, senior Counsel for the defence informed me from the bar that both he and his junior had made inquiries of some banks and were informed that those banks were not prepared to provide an annuity based on the Murphy & Dunbar tables or Whitaker's Almanac on which the tables appeared to be based because the rates of interest on capital sums invested may vary from year to year. Therefore it seemed to me that in fact the annuities provided in the tables were incapable of being purchased at this point of time and consequently any assessment based on them would be academic and futile. Counsel for the defendant conceded that the Court was free to choose either method. Accordingly the multiplier method was applied as indeed it was in the Privy Council case of *Lai Wee Lian v. Singapore Bus Service (1978) Ltd.* [1984] 1 MLJ 325, see p. 328.

g It was conceded by the defence that the plaintiff is totally unemployable. The medical evidence is that he will not be able to perform any job whatsoever. I had to take into consideration that the father's companies were relatively new. They could flourish. They could also fail. I had to have in mind the chances of continuing business success in the absence of the father who testified to being 51 years old. I take judicial notice of the recessionary years in this country in the mid-eighties. I had to consider the plaintiff's untested capability as a worker, expenses he would incur in earning wages, his liability to pay income tax and E.P.F. benefits. Taking all matters into consideration I assess his pre judgment loss of earnings at an average of RM400 per month for the period commencing on 23 October 1981

h when he turned eighteen years of age and would ordinarily have been ready to earn his living, and his post judgment earnings at an average of RM600 per month.

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As to the multiplier to be applied, Counsel on both sides cited a number of cases which I read and appreciated. In the end it was thought appropriate to follow *Lai Wee Lian's* case which is a leading if not the leading authority on the point and one which I am bound by. Guided by that case I took into consideration the contingencies and uncertainties of human life and accelerated payment and set the multiplier at 15 years.

Turning to the claim for nursing care it was suggested on behalf of the defence that there was no medical evidence to support such a claim. I disagree. The consultant neurologist stated expressly in his report of 4 April 1990 that the plaintiff will always need to be in a protected environment where food is being provided and his movements monitored. He also said that because of his poor understanding generally, he is not able to clean himself well enough to be socially acceptable. As I see it nursing care is necessary not only for the physically handicapped such as paraplegics but also for the mentally incapacitated, in appropriate cases. The plaintiff's father spoke in evidence as did the lady who cared for the plaintiff since the accident that the plaintiff was unable adequately to perform the normal function of bathing and cleaning himself. I accept their testimony in this regard. On the evidence adduced on behalf of the plaintiff and the agreed medical evidence and coupling thereto my own observation of the plaintiff during the trial I find that the plaintiff cannot manage on his own. I find that for the rest of his life he will need nursing care. Counsel for the plaintiff suggested a figure of RM500 per month, based on evidence of actual payment to the lady. Counsel for the defendant countered with RM250 per month if the Court was minded to allow the claim under this head. As I see it, the amount to be awarded is one which in all the circumstances of the case is reasonable and not exclusively on actual payment. I agree with the amount suggested by Counsel for the defence. As to damages for nursing care in the past the award is RM250 per month from the date of accident to date of judgment. As to future nursing care I award a sum of RM300 per month and apply a multiplier of 15 upon a consideration of all the medical evidence which although not expressing a shortened expectation of life does disclose such a case especially bearing in mind that his condition is not likely to improve and there is a possibility of his developing seizures later in life.

Accordingly it is adjudged that the defendant do pay the plaintiff damages as follows:

1. (a) special damages agreed at RM500.
 - (b) damages for pain and suffering and loss of amenities in respect of:
 - (i) the head injury assessed at RM100,000.
 - (ii) the eye injury agreed at RM20,000.
 - (c) damages for past loss of earnings assessed at RM46,293.
 - (d) damages for future loss of earnings or earning capacity assessed at RM108,000.
 - (e) damages for past cost of nursing care assessed at RM39,599.
 - (f) damages for future cost of nursing care assessed at RM54,000.
2. The defendant shall also pay the plaintiff interest on the special damages at the rate of 4% per annum from the date of accident to the date of judgment, and on the damages for pain and suffering and loss of amenities, past loss of earnings and past cost of nursing care at 9% per annum from the date of service of the writ to date of judgment, and costs of the action to be taxed.

- a* 3. The damages are to be paid into Court pending further order.
4. The sum of RM122,000 now deposited in the Court is to be credited to the damages.
5. There is to be liberty to apply.

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Also found at [1991] 3 CLJ 2513

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